

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CRIMINAL NO. 4:12CR280 MAC/DDB
	§	
LUIS ELICEO OTERO	§	

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on April 28, 2015, to determine whether Defendant violated his supervised release. Defendant was represented by Robert Arrambide. The Government was represented by Marisa Miller.

On September 10, 2013, Defendant was sentenced by the Honorable Marcia A. Crone, United States District Judge, to a sentence of 21 months imprisonment followed by a 5-year term of supervised release for the offense of Failure to Register. Defendant began his term of supervision on May 28, 2014.

On April 6, 2014, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender under Supervision (the "Petition") (Dkt. 29). The Petition asserts that Defendant violated the following conditions of supervision: (1) Defendant shall refrain from any unlawful use of a controlled substance; (2) Defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician (3) Under the guidance and direction of the U.S. Probation Office, Defendant shall participate in a sex offender treatment program which may include the application of physiological testing instruments. Defendant shall

pay any cost associated with treatment and testing; and (4) Defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.

The Petition alleges that Defendant committed the following violations: (1) On September 30, 2014, Defendant submitted a diluted specimen; (2) On January 29, 2015; February 13, 17, 20 and 26, 2015, Defendant submitted a urine specimen that tested positive for marijuana. Laboratory testing confirmed said use; (3) On January 9, 2015, a Maintenance Polygraph Examination was administered to Defendant by Behavioral Measures & Forensic Services Southwest. The test results support a finding of “Deception Indicated.” The Examiner opined that Defendant’s answers to the relevant test questions were untruthful. On February 13, 2015, a second Maintenance Polygraph Examination was administered to Defendant by Behavioral Measures & Forensic Services Southwest. The test results supported a finding of “Deception Indicated.” Again, the Examiner’s professional opinion was that Defendant’s answers to the relevant test questions were untruthful. As such, it is alleged that Defendant has failed to successfully participate in a sex offender treatment program; and (4) On February 13, 2015, Defendant was asked by the probation officer if he had used drugs recently. Defendant stated he had not used marijuana since January 2015. Defendant failed to answer truthfully the inquiries of the probation officer as evidenced by the positive drug tests he submitted on February 13, 17, 20, and 26, 2015.

At the hearing, Defendant entered a plea of true to the alleged violations. Defendant waived his right to allocute before the district judge and his right to object to the report and recommendation of this Court. The Court finds that Defendant has violated the terms of his supervised release.

RECOMMENDATION

Pursuant to the Sentencing Reform Act of 1984 and having considered the arguments presented at the April 28, 2015 hearing, the Court recommends that Defendant be committed to the custody of the Bureau of Prisons to be imprisoned for a term of eleven (11) months, with forty-nine (49) months supervised release to follow.

SIGNED this 4th day of May, 2015.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE